IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : Crl. Revn. No. 2520 of 2006
Date of Decision : December 12, 2007.

M/s Raj Kumar Vijay Kumar and another .... Petitioners

Vs.

Pawan Kumar .... Respondent

CORAM : HON'BLE MR. JUSTICE L. N. MITTAL

* * *

Present : Mr.R.K.Gupta, Advocate
for the petitioners.

Mr.Binderjeet Singh, Advocate
for the respondent.

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L.N.MITTAL, J. (Oral) :

Petitioners have approached this Court by way of the instant revision petition to assail order dated 16.10.2006 of learned Judicial Magistrate Ist Class, Bathinda, negating the petitioners' objection relating to territorial jurisdiction of the Court at Bathinda to try the criminal complaint filed by the respondent herein under Section 138 of the Negotiable Instruments Act, 1881 (in short - `the Act').

Facts relevant for the instant revision petition lie in a very narrow compass. Petitioners issued a cheque in favour of respondent at Maur Mandi. Both parties are residents of Maur Mandi. The cheque was presented at Bank at Maur Mandi and was dishonoured there. Demand Notice on behalf of respondent was issued by his Advocate from Bathinda

to the petitioners at Maur Mandi. When payment of the cheque amount was not made inspite of Demand Notice, the respondent filed complaint under Section 138 of the Act in the Court at Bathinda. The petitioners moved an application raising preliminary objection to territorial jurisdiction of the Court at Bathinda. The said application stands dismissed by the impugned order holding that the Court at Bathinda has territorial jurisdiction.

Learned counsel for the petitioners relying on a judgment in the case of ***Hong Kong and Shangahi Banking Corporation vs. Manas Satpathy*** reported as ***2005 (4) RCR (Criminal) 120*** contended that mere issuing of notice from Bathinda does not give territorial jurisdiction to the Court at Bathinda. There is considerable merit in the submission. In the instant case, except issuance of notice from Bathinda, everything else constituting cause of action for the impugned complaint, happened at Maur Mandi, within territorial jurisdiction of the Court at Talwandi Sabo in District Bathinda. Learned counsel for the petitioners rightly submitted that if in such a case, Demand Notice is issued from Mumbai, the Court at Mumbai would not have territorial jurisdiction because this would enable the complainant to harass the accused by getting the notice issued from a distant place. The argument is well merited. In the instant case, even the notice was received by the petitioners at Maur Mandi and even payment was to be made at Maur Mandi. Therefore, in the facts of the instant case, the Court at Bathinda cannot be said to be having territorial jurisdiction.

Learned trial court relied on a judgment in the case of ***K.Bhaskaran vs. Sankaran Vaidhyan*** reported as ***1999 ISJ (Banking) 688 (Supreme Court of India)***. Learned counsel for the respondent has also cited the same and contended that even giving notice in writing to the drawer of the cheque constitutes part of cause of action giving jurisdiction to the Court of the place from where the notice is issued. The argument cannot be sustained. The Hon'ble Apex Court has of course held that giving of notice in writing to the drawer of the cheque, demanding payment of the

cheque amount, constitutes part of cause of action. The notice to the drawers, i.e. to the petitioners in the instant case was however given at Maur Mandi although issued from Bathinda. So, even as per decision of the Hon'ble Apex Court in the case of ***K.Bhaskaran (supra)***, in the instant case, the territorial jurisdiction would lie with Court at Talwandi Sabo, within whose territorial jurisdiction Maur Mandi is situated, where the notice was given to the petitioners. In this context, reliance by learned counsel for the petitioners has been placed on a judgment in the case of ***Dalmia Cement (Bharat) Ltd. vs. Galaxy Traders & Agencies Ltd. And others*** reported as ***(2001) 6 Supreme Court Cases 463***, wherein it was observed that it is not the giving of notice which makes the offence but it is the receipt of the notice by the drawer which gives the cause of action to the complainant to file the complaint. In the instant case, the petitioners received the notice at Maur Mandi and not at Bathinda.

In view of the aforesaid, it is held that in the instant case, the Court at Bathinda has no territorial jurisdiction to try the impugned complaint and the Court at Talwandi Sabo has territorial jurisdiction to try the complaint.

Following the course of action in the case of ***Hong Kong and Shangahi Banking Corporation (supra)***, in the instant case also, learned Judicial Magistrate Ist Class, Bathinda, who passed the impugned order, is directed to send the impugned complaint to Chief Judicial Magistrate, Bathinda, who shall assign it to the Court of competent jurisdiction at Talwandi Sabo for trial.

The revision petition accordingly stands disposed of in the above terms.

December 12, 2007 **(L.N.MITTAL)**
monika **JUDGE**